In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-501

DR. J. W. EDGAR, COMMISSIONER OF EDUCATION, AND THE TEXAS EDUCATION AGENCY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the Court's attention to the following facts which show that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on July 9, 1971. A motion for a stay pending application for writ of certiorari was denied by the court of appeals on July 16, 1971, and a similar application to this Court was denied on July 29, 1971, by Mr. Justice Black.[1] The time for filing a petition for a writ of certiorari expired on October 7, 1971, and no extension was sought. Since the petition was not filed until October 8, 1971, this Court lacks jurisdiction. 28 U.S.C. 2101(c).

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It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

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[1] In denying the stay, Mr. Justice Black stated: "The District Court's opinion and order are comprehensive and well reasoned. In my judgment the facts found by the District Court, which do not appear to be materially disputed by the applicants, fully justify the order."

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